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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/704,808	11/02/2000	John F. Finley	1585.01	4313

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JOE D. CALHOUN  
319 PRESIDENT CLINTON AVENUE  
SUITE 205  
LITTLE ROCK, AR 72201

EXAMINER

MILLER, BENA B

ART UNIT PAPER NUMBER

3712

DATE MAILED: 07/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/704,808

Applicant(s)

FINLEY, JOHN F. *CF*

Examiner

Bena Miller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Applicant recites in claim 1 "A device for housing"; however, dependent claims 2-10 recites "A housing device". Accordingly, it is noted that the examiner will treat dependent claims 2-10 as "a device for housing" for the purpose of this Office Action. Applicant is requested to provide a consistent use of the terminology "A device for housing" or "A housing device" throughout the claims. Regarding claims 11-20 see set forth above.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with indefiniteness that is too numerous to point out in every instance. The following examples are provided for the applicant's use in making corrections wherever appropriate but not specifically pointed to.

In several instances in the claims, there is a lack of antecedent basis for claimed elements. For example only, there is lack of antecedent basis for the elements "the frame" and "the reeds" both recited in line 1 of claim 1, the expressions "said cavity dorsally" as recited in line 3 of claim 2, and "said mated pair" as recited in line 3 of claim 3. There is also a lack of proper antecedent basis for the claimed limitation "said contour-mimicking upper surface" as recited in line 1 of claim 8.

In several instances in the claims, the examiner is unsure as to what structure is encompassed by the phrases such as "adapted to" as recited in line 3 of claim 1 and "sized for" as recited in line 1 in claim 6. Expressions such as those pointed above appear to recite only functions or intended uses of the claimed device and do not appear to add any structure to the claims.

In several instances in the claims, the examiner is unsure as to what is encompassed by phrases such as "said cavity dorsally bounded by buttress" as recited in line 3 of claim 2. Is applicant intending to recite a buttress? Furthermore, the examiner is unsure as to what is encompassed by phrases such as, "ventrally oriented space essentially situated between the corresponding ventral arc" as recited in claim 3, "said housing buttress" as recited in claim 5. Furthermore, the examiner is unsure as to what is meant by the phrase "the reed(s)" as recited in line 1 of claim 1. In US practice, parentheses do not further limit a claim.

Additionally, in several instances, the claims appear to recite further structural limitations on or are dependent on elements or features, which are not claimed. For example only, line 1 of claim 1 indicates that what is claimed is "a device for housing the frame containing the reed(s) in a caller for producing sound to attract wild game". Therefore, it is presumed that the frame, reed(s) and caller are not claimed. On the other hand, claim 3 recites further limitations on the caller. In this Office Action, all elements not clearly claimed in combination with the claimed "device for housing" are not considered to be further structurally limiting with respect thereto. (Note that it is now well settled that features not claimed may not be relied upon in support of Patentability).

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On the other hand, clarification of the scope of the claims is required. Corrections are required wherever appropriate but specifically pointed to.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Cooper (US Patent # 4,960,400).

Regarding claims 1 and 11, as best understood, Cooper teaches a device for housing comprising planar elastomeric material since Cooper teaches in col. 6, paragraph 3, an inherent resilient corrugated material and a planar cavity (95) configured as claimed.

Regarding claims 2 and 12, as best understood, the examiner considers the upper and lower frame, which sandwiches reeds 5 and 6 (col. 3, lines 54-68) of Cooper to meet the definition of the a ventral aspect and a dorsal aspect of the claimed invention.

Regarding claims 3 and 13, as best understood, Cooper further teaches at least one resiliently-flexible reed (5) since Cooper teaches a flexible frame (col. 1, paragraph 8) and the diaphragms or reeds are inherently resilience (col.6, paragraph 4).

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Regarding claims 4 and 14, as best understood, the examiner considers the prong (82) of channels (80) defines neck (83) of Cooper to meet the definition of the end stops of the claimed invention.

Regarding claims 5 and 15, as best understood, the examiner considers the frame 20 has legs 22 and 23 joined by a cross-piece 24 in figure 5 of Cooper to meet the definition of the crescent flap.

The examiner considers the functional recitations of claims 6 and 16 to be inherent in the device of Cooper.

Regarding claims 7, 8, 17 and 18, as best understood, the examiner considers the upper surface (31) in figure 5 of Cooper to meet the definition of the claimed upper surface.

Regarding claims 9 and 19, as best understood, Cooper further teaches a human palate in figure 6 since when the call is use, the forward edge 29 is closer to the lips of the user and the upper surface 31 is adjacent the roof of mouth of the user.

Regarding claims 10 and 20, as best understood, the examiner considers the surface of figure 6 of Cooper to meet the definition of the claimed concave lower surface.

### ***Response to Arguments***

Applicant's arguments filed 04/19/02 have been fully considered but they are not persuasive. In response to applicant's argument that the limitations, as claimed, overcome the USC 112, 2<sup>nd</sup> paragraph rejections, the examiner disagrees. The

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examiner has specifically pointed out in the rejection, set forth above, certain limitation(s) and phrase(s), which fail to overcome the 112, 2<sup>nd</sup> paragraph rejections.

In response to applicant's argument that Cooper is non-analogous to the claimed invention, it appears that applicant is using an intended argument to support the contention that Cooper is non-analogous. Thus, the applicant does not provide an adequate explanation of how Cooper is non-analogous to the claimed invention. On the other hand, it has been held that a recitation with respect to the manner in which a claimed apparatus intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

Applicant argues that in claims 2 and 12 of the claimed invention that the limitations "ventral aspect" and "dorsal aspect" are not necessarily the primary distinguishing features of the claims. However, the limitations recited in the claims require that the examiner consider them. Furthermore, applicant admits that Cooper teaches the limitations of the claimed invention.

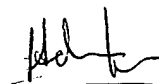
In several instances, applicant argues that examiner was intending to recite other figures and/or features of the prior art to support the rejection of the claimed invention, rather than the figures and/or features of the prior art actually pointed out in the last Office Action. The examiner wishes applicant to note that the examiner is relying only on those elements or features of the prior art that were referred to in the Office Action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 703.305.0643.

The examiner can normally be reached on Monday-Friday.

bbm  
June 26, 2002



Jacob K. Ackun  
Primary Examiner